



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 4450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,248	12/03/2001	Brian C. Barnes	2000.056500	7937
23720	7590	10/18/2005	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			LEMMMA, SAMSON B	
			ART UNIT	PAPER NUMBER
			2132	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/005,248	Applicant(s) BARNES ET AL.	
	Examiner Samson B. Lemma	Art Unit 2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-24 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*PD*

## ***DETAILED ACTION***

1. This office action is in reply to an amendment filed on July 14, 2005.

**Claims 1-24** are pending.

## **Response to Arguments**

2. Applicant's argument filed on July 14, 2005 have been fully considered and they are persuasive.

As applicant persuasively argued, the limitation in the amended independent claims 1, 9 and 17 recites the patentably distinct features of the present invention.

## ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claims 1-24** are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 1-24** of the copending Application No. 10/005225 (hereinafter referred as '**225**

**application.)** Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**The following is referring to the independent claims**

- **As per independent claim 1,** **claim 1** of the instant application and **claim 1** of the **'255 application** recite similar/same limitation about a method of associating a first security identification (id) with each of plurality of instructions or a set of instructions that are to be executed by a processor.. Furthermore, all elements/limitation of **claim 1** of the instant application is recited in the **claim 1** of the **'255 application**, except **claim 1** of '255 application **contains** the following additional limitation **"at the most privileged level"**. Otherwise, all elements/limitation of claim 1 of the instant application is recited in the claim 1 of the **'225 application**.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add the features of **"at a most privileged level"** on **the processor** of the instance application, to indicate the various types of security risks. (See for instance "A common Man's Guide to Operating System Design", which Kernel utilize privilege levels. Processes usually have access to most of the system's resources when they are operating at the most privileged level.) (See reference U, page 4-5, "under the title "kernel")

- **As per independent claim 9,** **claim 9** of the instant application and **claim 9** of the **'255 application** recite similar/same limitation about an apparatus, comprising: a processor for running code/for initiating the execution, for

Art Unit: 2132

associating a first security identification (id) with each of plurality of instructions or a set of instructions/ a plurality of software codes that are to be executed by a processor. Furthermore, all elements/limitation of **claim 1** of the instant application is recited in the **claim 1** of the '255 application, except **claim 1** of '255 application **contains** the following additional limitation "**at the most privileged level**" and "**a memory including space for associating a first security identification**". Otherwise, all elements/limitation of claim 9 of the instant application is recited in the claim 9 of the '225 application.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add the features of "at a most privileged level" on **the processor** of the instance application, to indicate the various types of security risks. (See for instance "A common Man's Guide to Operating System Design", which Kernel utilize privilege levels. Processes usually have access to most of the system's resources when they are operating at the most privileged level.) (See reference U, page 4-5, "under the title "kernel")

- **As per independent claim 17, claim 17** of the instant application and **claim 17** of the '255 application recite similar/same limitation about an apparatus/article, comprising: associating a first security identification (id) with each of plurality of instructions or a set of instructions/ a plurality of software codes that are to be executed by a processor. Furthermore, all elements/limitation of **claim 17** of the instant application is recited in the **claim 17** of the '255 application, except **claim 17** of '255 application **contains** the following additional limitation "**at the most privileged level**". Otherwise, all elements/limitation of claim 17 of the instant application is recited in the claim 17 of the '225 application.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add the features of "at a most privileged level" on **the processor** of the instance application, to indicate the various types of security risks. (See for instance "A common Man's Guide to Operating System Design", which Kernel utilize privilege levels. Processes usually have access to most of the system's resources when they are operating at the most privileged level.) (See reference U, page 4-5, "under the title "kernel")

**The following is referring to the dependent claims**

- **As per claim 2, claim 2** of the instant application and **claim 2** of the '533 application further recite similar/same limitation of the same subject matter.
- **As per claim 3, claim 3** of the instant application and **claim 6** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 7, claim 7** of the instant application and **claim 8** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 8, claim 8** of the instant application and **claim 8** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 10, claim 10** of the instant application and **claim 10** of the '255 application further recite similar/same limitation of the same subject matter.

Art Unit: 2132

- **As per claim 11, claim 11** of the instant application and **claim 14** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 15, claim 15** of the instant application and **claim 16** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 16, claim 16** of the instant application and **claim 16** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 18, claim 18** of the instant application and **claim 18** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 19, claim 19** of the instant application and **claim 22** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 23, claim 23** of the instant application and **claim 24** of the '255 application further recite similar/same limitation of the same subject matter.
- **As per claim 24, claim 24** of the instant application and **claim 24** of the '255 application further recite similar/same limitation of the same subject matter.

### ***Allowable Subject Matter***

Art Unit: 2132

5. **Claims 1-24** would be allowable if rewritten to overcome the Double Patenting rejection(s) set forth in this office action.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examine should be directed to Samson B Lemma whose telephone number is 571-272-3806. The examiner can normally be reached on Monday-Friday (8:00 am---4: 30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BARRON JR GILBERTO can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**SAMSON LEMMA**  
**S.L.**  
**10/03/2005**

  
**GILBERTO BARRON JR.**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**